No. 83-372

In the Supreme Court of the United States

OCTOBER TERM, 1983

FRANCHISE TAX BOARD OF CALIFORNIA, APPELLANT

v.

UNITED STATES POSTAL SERVICE

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE APPELLEE

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QUESTION PRESENTED

Whether a state agency, without resort to judicial process, may require the Postal Service to withhold sums from the wages of its employees to pay the employees' delinquent state income tax liabilities.

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OPINIONS BELOW

The opinion of the court of appeals (J.S. App. 1-16) is reported at 698 F.2d 1029. The opinion of the district court (J.S. App. 19-25) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 1983 (J.S. App. 1). A petition for rehearing was denied on June 3, 1983 (J.S. App. 26). A notice of appeal was filed on August 12, 1983 (J.S. App. 27). The Jurisdictional Statement was filed on August 31, 1983, and the Court noted probable jurisdiction on January 9, 1984 (J.A. 62). The jurisdic-

tion of this Court is invoked under 28 U.S.C. 1254(2). We discussed this Court's jurisdiction at pages 7-8 of the Motion to Dismiss or Affirm.

STATEMENT

Appellant, an agency of the California state government, is responsible for collecting state personal income taxes. Under Cal. Rev. & Tax. Code § 18817 (West 1983), appellant may "require any employer * * * having in [its] possession, or under [its] control, any credits or other personal property or other things of value, belonging to a taxpayer * * * to withhold * * * the amount of any tax, interest, or penalties due from the taxpayer * * * and transmit the amount withheld to" appellant. These "orders to withhold" are administrative levies, issued by appellant without any judicial hearing or court order. See Cal. Rev. & Tax. Code §§ 18583 *et seq.* The taxpayer's remedy is to seek a refund through administrative procedures; if administrative relief is denied, the taxpayer must institute a suit for a refund. See Cal. Rev. & Tax. Code §§ 19051 *et seq.* and 19082.

In 1978, appellant sought to collect delinquent state income taxes from four Postal Service employees by serving orders to withhold, pursuant to Section 18817, on the Postal Service. When the Postal Service declined to withhold the amounts sought by appellant from the employees' wages, appellant brought this action against the Postal Service in the United States District Court for the Central District of California, seeking the amounts in issue. Appellant relied on Cal. Rev. & Tax. Code § 18818, which provides that "[a]ny employer or person failing to withhold the amount due from any taxpayer and to transmit the same to [appellant] after service of a notice pursu-

ant to Section 18817 is liable for such amounts." [1] J.S. App. 7-8, 20-21; J.A. 8-14. Appellant did not attempt to reduce the alleged tax delinquencies to judgment or to seek a judicial order of garnishment or attachment before suing the Postal Service.

The district court granted summary judgment in favor of the Postal Service (J.S. App. 17-25).[2] It based its ruling primarily on 5 U.S.C. 5517, which specifies that when a state statute provides for taxes to be collected by withholding from employees' pay, the federal government shall, upon request by the state, "enter into an agreement with the State * * * [which] agreement shall provide that the head of each agency * * * shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the [state] tax * * *." The district court noted that the agreement between California and the federal government provides only for the withholding of anticipated taxes and "does not require any collection of delinquent tax liabilities by federal officials in any manner whatsoever" (J.A. App. 23).

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[1] The district court had jurisdiction by virtue of 39 U.S.C. 409(a) and 28 U.S.C. 1339. Cf. *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, No. 82-695 (June 24, 1983).

[2] This action was consolidated with a suit against the Postal Service brought by another California state agency, the Employment Development Department, which sought to recover unemployment insurance taxes allegedly owed by contractors that had done work for the Postal Service. The district court granted summary judgment in favor of the Postal Service (J.S. App. 23-24), but the court of appeals reversed (*id.* at 2-7), and the Postal Service has not sought further review.

The court of appeals affirmed (J.S. App. 1-16). It rejected appellant's argument that 39 U.S.C. 401(1), which provides that the Postal Service may "sue and be sued in its official name," waived the Postal Service's sovereign immunity in such a way as to authorize appellant's orders to withhold. The court reasoned that the "sue and be sued" clause of Section 401(1) was a "general" provision that cannot "override[] the specific limitations and restrictions of 5 U.S.C. § 5517 and the pertinent agreements and regulations." J.S. App. 13. The court noted that the agreement reached by California and the federal government pursuant to 5 U.S.C. 5517 "specifically states: '3. Nothing in this agreement shall be deemed: . . . (b) to require collection by agencies of the United States of delinquent tax liabilities of Federal employees'" (J.S. App. 9-10 (quoting J.A. 3)). The court of appeals noted in addition that regulations implementing Section 5517 contain a similar limitation (J.S. App. 10, citing 31 C.F.R. 215.12(a) (1978)). The court accordingly held (J.S. App. 13):

> In view of the agreements and regulations pursuant to the authorization of § 5517, federal cooperation with state withholding tax statutes is limited to current withholding from current wages to meet current anticipated income tax liabilities of the federal employee. Withholding of wages of federal employees cannot be used to collect delinquent tax liabilities.

The court of appeals also rejected appellant's argument that Section 5517 is no longer applicable to the Postal Service (J.S. App. 11-12).

Judge Schroeder dissented. She urged that "[t]he federal courts have consistently held that [39 U.S.C.] 401(1) waives Postal Service immunity from state

garnishment proceedings" and that "[t]he statutory collection process in question here is essentially a garnishment procedure" (J.S. App. 15-16).

SUMMARY OF ARGUMENT

It is well established that a creditor of a federal employee may not collect his debt by levying on wages that the government owes to the employee, unless Congress has enacted a waiver of sovereign immunity that permits such a levy. Appellant contends that the "sue and be sued" clause of the Postal Reorganization Act is a waiver of sovereign immunity that permits it to enforce its orders to withhold against the Postal Service. But the "sue and be sued" clause is, at most, a waiver of immunity from judicial process. It does not authorize appellant's purely administrative orders, which are not issued by a court and have no connection to any judicial proceeding.

A. Appellant proceeds from the premise that the "sue and be sued" clause makes sovereign immunity irrelevant to the Postal Service's affairs. But that is not what the clause says, and in interpreting "sue and be sued" clauses in other statutes, the Court has relied on the plain meaning of the words. To "be sued" is to be subject to a lawsuit—that is, to a " 'proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him' " (*FHA* v. *Burr*, 309 U.S. 242, 246-247 n.8 (1940), quoting *Weston* v. *City Council of Charleston*, 27 U.S. (2 Pet.) 448, 464 (1830) (Marshall, C.J.)). A "sue and be sued" clause generally makes an agency "amenable to judicial process" (*Burr*, 309 U.S. at 245); it waives an agency's immunity "from suit and judicial process,

and their incidents" (*Federal Land Bank* v. *Priddy*, 295 U.S. 229, 235 (1935)). Appellant's administrative orders are not judicial process and are not an incident of any suit; they are not connected to judicial proceedings in any way.

Both Congress and this Court have recognized a distinction between state judicial proceedings and state administrative proceedings in many contexts. Moreover, administrative process, unlike judicial process, comprises a sprawling and ill-defined class of orders issued by officials, high and petty, of every unit of government across the nation. If appellant's view were to prevail, any one of these officials could order the Postal Service to pay over a sum of money. Levies like appellant's, which seek funds owed by the Postal Service to its employees, have a particularly great potential for disruption; because they are unadjudicated orders that the employee may well dispute, they can precipitate litigation between the Postal Service and the employee, or a dispute between the employee and the alleged creditor in which the Postal Service may become embroiled. There is no reason to believe that Congress, when it reorganized the Post Office in order to improve its efficiency, intended that a routine "sue and be sued" clause would impose on the new Postal Service all of these burdens that result from a complete waiver of immunity from administrative orders.

B. As the courts below noted, Congress has specifically addressed problems associated with the collection of state and local taxes from federal employees, and it has done so in a way that precludes appellant's administrative levies. In 1974, three years after the Postal Reorganization Act took effect, Congress enacted 5 U.S.C. 5520, which provides for the

withholding of anticipated local tax liabilities; the text and legislative history of Section 5520 demonstrate that Congress, and specifically the committees responsible for the PRA, assumed that the "sue and be sued" clause of the PRA did *not* permit state and local taxing authorities to issue administrative orders to the Postal Service in an effort to collect Postal Service employees' taxes.

Moreover, Congress has never authorized state taxing authorities to collect delinquent taxes from federal employees by simply serving on federal agencies whatever levies are available under state law. With one exception, Congress has chosen to aid the collection of state and local taxes from federal employees by authorizing the withholding of employees' anticipated—not delinquent—tax liabilities. Withholding of anticipated tax liabilities is far less likely than the withholding of delinquent taxes to disrupt the employer-employee relationship or to cause disputes and litigation in which the federal agency may become involved.

The one exception is the "piggyback" provisions of the Internal Revenue Code, under which state agencies may collect delinquent taxes by having sums withheld from federal employees' compensation. But in order to reduce the administrative burdens on the federal government, Congress prescribed specific criteria that a state must meet to take advantage of these provisions and specific procedures that the collection process will follow; appellant has chosen not to take advantage of the "piggyback" enforcement scheme. A standard "sue and be sued" clause should not be interpreted to permit state tax levies, like appellant's, that are inconsistent with the entire pattern of congressional action in this area.

ARGUMENT

CONGRESS DID NOT WAIVE THE IMMUNITY OF THE POSTAL SERVICE FROM STATE ADMINISTRATIVE TAX LEVIES

A creditor of a federal employee may not collect his debt by levying on wages owed to the employee by a federal agency, unless Congress has enacted a waiver of sovereign immunity that permits such a levy. The Court has considered this proposition "clear of doubt" for almost a century and a half. *Buchanan* v. *Alexander*, 45 U.S. (4 How.) 19, 21 (1846); see, *e.g.*, *FHA* v. *Burr*, 309 U.S. 242, 244 (1940). As the Court has explained: "The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted or defeated by state process or otherwise, the functions of the government may be suspended" (*Buchanan*, 45 U.S. (4 How.) at 20). To allow "creditors of [government employees] * * *, by process of attachment, [to] divert the public money from its legitimate and appropriate object" would "[a]t all times * * * be found embarrassing, and under some circumstances it might be fatal to the public service" (*ibid.*).

Appellant does not seriously dispute that these principles apply to the Postal Service; appellant appears to recognize that it cannot enforce its orders to withhold unless Congress has waived the Postal Service's sovereign immunity in a way that permits such administrative levies. Appellant identifies 39 U.S.C. 401(1), the "sue and be sued" clause of the Postal Reorganization Act (PRA), as the waiver of sovereign immunity on which it relies. That clause provides that "[t]he Postal Service shall have the

* * * general power[] * * * to sue and be sued in its official name * * *."

Appellant argues at length, citing many lower court decisions, that under Section 401(1) the Postal Service must honor judicial garnishment orders (see, *e.g.*, Br. 12, 17-19, 22-23). But this case presents no question concerning judicial garnishment orders. Appellant, or any other creditor, may garnish or attach Postal Service employees' wages by obtaining the appropriate judicial writ. Postal Service regulations specifically mandate the withholding from employees' wages of sums that are garnished by court order. USPS, *Financial Management Manual* § 431.1(g) (1978); see 39 C.F.R. 211.2(a)(2). If appellant had reduced the alleged tax delinquencies of the Postal Service employees to judgment, the Postal Service would have honored judicial writs of garnishment designed to execute the judgments.

This case instead concerns whether Congress intended to permit Postal Service employees' salaries to be diverted by a levy—such as appellant's order to withhold—that is issued not by a court but by a state administrative agency. Appellant simply asserts that its administrative levies should be treated in the same fashion as court orders, without explaining why this is so.[3] But appellant's contention that Sec-

[3] Appellant does argue briefly (Br. 33-35) that its orders to withhold are "analogous to a judgment creditors' garnishment" (Br. 33). But appellant's argument on this point is entirely directed to showing that its orders satisfy the requirements of due process, a point we do not dispute. None of the cases cited by appellant (Br. 34) addresses questions of sovereign immunity or the construction of a "sue and be sued" clause; rather, they suggest that appellant's orders to withhold resemble postjudgment garnishment for purposes of the Due Process Clause, or that it is a "plain, speedy and efficient

tion 401(1) authorizes its administrative levies is not supported by the language of the "sue and be sued" clause; by the interpretation this Court has historically given to similar clauses in other statutes; by the structure or legislative history of the PRA; or—as the courts below noted—by Congress's consistent treatment of problems arising from the collection of state income taxes from federal employees.

A. A "Sue And Be Sued" Clause Is Not An Undifferentiated Waiver Of Sovereign Immunity And Ordinarily Authorizes, At Most, Only Judicial Process And Its Incidents

1. Appellant and the amici begin with the premise that the "sue and be sued" clause of the PRA strips the Postal Service of sovereign immunity in all its forms and renders sovereign immunity irrelevant to the Postal Service's affairs. See, *e.g.*, Appellant Br. 15-23; Am. Br. 2, 3.[4] But a clause providing that an agency may "sue or be sued" does not say that the agency "shall have no sovereign immunity whatever." And this Court has never treated the "sue and be sued" clause, which is found in many statutes, as such a "ritualistic formula" (*Keifer & Keifer* v. *RFC*, 306 U.S. 381, 389 (1939)) that necessarily divests a federal instrumentality of all sovereign immunity.

In interpreting "sue and be sued" clauses, the Court has been sensitive to all indications of con-

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remedy" under 28 U.S.C. 1341. See, *e.g.*, *Kelly* v. *Springett*, 527 F.2d 1090, 1094 (9th Cir. 1975); *Randall* v. *Franchise Tax Board*, 453 F.2d 381, 382 (9th Cir. 1971); *Aronoff* v. *Franchise Tax Board*, 348 F.2d 9 (9th Cir. 1965).

[4] "Am. Br." refers to the brief of amici curiae Delaware, et al.

gressional intent—the language of the clause, its statutory context, and its legislative history. As the Court said in one of its first decisions interpreting such a clause, it "may have one significance in one context and a different signification in another" (*Porto Rico* v. *Rosaly y Castillo*, 227 U.S. 270, 275 (1913)). Indeed, in *Rosaly*, the Court held that because of "the nature of the Porto Rican government" (*id.* at 274), a clause providing that that government could "sue and be sued" was "[i]n a sense * * * redundant" and did not narrow its sovereign immunity at all (*id.* at 227). See also *Chewning* v. *District of Columbia*, 119 F.2d 459 (D.C. Cir.), cert. denied, 314 U.S. 639 (1941) ("sue and be sued" clause does not authorize garnishment of the government of the District of Columbia).

In its next important decision interpreting such a clause, *Federal Land Bank* v. *Priddy*, 295 U.S. 229 (1935), the Court ruled that a "sue and be sued" clause permitted a plaintiff suing a government instrumentality to use prejudgment attachment. But the Court reached this conclusion not because the "sue and be sued" clause waived sovereign immunity in all respects but because liability to prejudgment attachment was the "implication" to be drawn from the words of the clause and the "character" of the defendant, and because "it does not appear that the attachment would directly interfere with any function performed by [the defendant] as a federal instrumentality" (*id.* at 232-233, 234, 237). The Court expressly "reserve[d] the question whether a different result would be required if such an interference were shown" (*id.* at 237). The Court followed a similar approach in *RFC* v. *J.G. Menihan Corp.*, 312 U.S. 81 (1941), where it examined other statutes

governing the defendant federal instrumentality (*id.* at 83) and the language of the clause before concluding that "the words 'sue and be sued' normally include the natural and appropriate incidents of legal proceedings" (*id.* at 85).

In *FHA* v. *Burr*, *supra*—the case on which appellant chiefly relies—the Court held that a statutory provision authorizing the Federal Housing Administration "to sue and be sued" permitted a creditor who had obtained a final judgment against employees of the FHA to garnish their wages. As we will explain, there are crucial differences between postjudgment garnishment pursuant to a judicial order and appellant's administrative levies. But in any event, the Court in *Burr*, unlike appellant, did not proceed from the premise that a "sue and be sued" clause is a blanket waiver of sovereign immunity in all its forms. Instead, the Court stated that "[s]ince consent to 'sue and be sued' has been given by Congress, the problem [is] * * * whether or not garnishment comes within the scope of that authorization" (309 U.S. at 244). The Court considered the nature of the FHA (*id.* at 245) before reaching its conclusion primarily on the basis of the language of the clause (*id.* at 245-246 (footnotes omitted)):

> Clearly the words "sue and be sued" in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. * * * [G]arnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words "sue and be sued" would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that

> when Congress authorized federal instrumentalities of the type here involved to "sue and be sued" it used those words in their usual and ordinary sense.

Moreover, quite apart from attachment and garnishment, the Court in *Burr*—rather than treating a "sue and be sued" clause as an undifferentiated waiver of sovereign immunity—stated that even certain *suits* might be precluded if it were "clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme [or] that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function" (309 U.S. at 245 (footnote omitted)). See also *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 277 (1959) ("[W]here a public instrumentality is created with a right 'to sue and be sued' that waiver of immunity in the particular setting may be restricted to suits or proceedings of a special character in the * * * courts."); *White* v. *Bloomberg*, 501 F.2d 1379, 1386 (4th Cir 1974) ("A grant of authority [to the Postal Service] to sue and be sued constitutes at least a partial waiver of immunity * * *. The question * * * is the scope of that waiver.").

2. To the extent the phrase "sue and be sued" has an established meaning, it is the meaning suggested by the words themselves: an agency may be subject to a lawsuit, that is, to *judicial* proceedings. For example, in *Federal Land Bank* v. *Priddy*, *supra*, the Court said that the case involved the "[i]mmunity of corporate government agencies from suit and judicial process, and their incidents" (295 U.S. at 235). The Court described the "sue and be sued" clause as a "waiver of immunity from suit" and defined the

question before it as "whether liability to suit includes by implication judicial process of attachment and execution, which are usual incidents of suits against natural persons" (295 U.S. at 232). See also *id.* at 233 ("the intended scope of the liability to suit includes judicial process incident to suit").

Similarly, in *RFC* v. *J.G. Menihan Corp.*, *supra*, the Court concluded that "the unqualified authority to sue and be sued placed [the government agency] upon an equal footing with private parties as to the usual incidents of suits" (312 U.S. at 85-86). The Court reasoned that "the words 'sue and be sued' normally include the natural and appropriate incidents of legal proceedings" (*id.* at 85).

In *Burr*, as we have noted, the Court relied primarily on the "normal connotation" of "the words 'sue and be sued'" (309 U.S. at 245). The Court stated that "in absence of special circumstances, * * * when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used those words in their usual and ordinary sense" (309 U.S. at 246 (footnote omitted)). The "usual and ordinary sense" of the phrase, the Court explained, was identified by Chief Justice Marshall (*id.* at 246-247 n.8, quoting *Weston* v. *City Council of Charleston*, 27 U.S. (2 Pet.) 448, 464 (1830)):

> "The term ['suit'] is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him. The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit."

The Court in *Burr* reasoned that postjudgment garnishment is "include[d] * * * in the words 'sue and be sued' " because it is "incident to" and "part and parcel" of a lawsuit (309 U.S. at 245-246). "[G]arnishment is a well-known remedy available to *suitors*" (*id.* at 246 (emphasis added)).[5]

Appellant's orders to withhold have no connection to any suit or to any "proceeding in a court of justice." Appellant's orders are not issued or approved by a court; they are neither the initiation nor the culmination of judicial proceedings; they can be issued without any court hearing or court order whatever. They are, it appears, final administrative orders that will give rise to a suit only if the taxpayer institutes a separate action seeking a refund. Their purpose is to facilitate the collection of taxes by an administrative agency, not to execute the judgment of a court or give a court the opportunity to exercise its jurisdiction. There is no basis for concluding that a clause that permits a federal instrumentality to be *sued*—that makes it, in the language of *Burr*, "amenable to *judicial* process" (309 U.S. at 245 (emphasis added))—also subjects it to such purely administrative process.

3. Another provision of the Postal Reorganization Act also suggests that when Congress permitted the Postal Service to "be sued," it envisioned only pro-

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[5] The court of appeals cases on which appellant relies adopt a comparable approach. See, *e.g.*, *Beneficial Finance Co.* v. *Dallas*, 571 F.2d 125, 128 (2d Cir. 1978) ("we see no proper alternative to literal interpretation of the 'sue and be sued' clause"); *General Electric Credit Corp.* v. *Smith*, 565 F.2d 291, 292 (4th Cir. 1977); *May Department Stores Co.* v. *Williamson*, 549 F.2d 1147, 1148 (8th Cir. 1977).

ceedings in court. Before the PRA was enacted, the Post Office Department could not be sued in its own name; by authorizing the Postal Service to "be sued" in Section 401(1), Congress created a new category of litigation. The jurisdictional provision of the PRA, 39 U.S.C. 409(a), suggests that when Congress did so, it envisioned litigation in court.

Section 409(a) provides, with an exception not relevant here, that:

> [T]he United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of [28 U.S.C. (& Supp. V) 1441 *et seq.*].

Congress plainly intended that if the Postal Service wished, it could remove all suits against it and thereby be "sued" only in federal court. Since state agency proceedings cannot be removed to federal court (*Upshur County* v. *Rich*, 135 U.S. 467 (1890)), this is a further indication that Congress did not intend the Postal Service to be subjected to state agency proceedings. Cf. *Chicago, R.I. & P.R.R.* v. *Stude*, 346 U.S. 574 (1954). It is, moreover, unlikely that Congress, while enabling the Postal Service to defeat the jurisdiction of state courts by removing suits brought against it, intended to require the Postal Service to submit to the jurisdiction of state administrative agencies.

4. a. We submit that confining the "sue and be sued" clause of the PRA to judicial process is not an excessively literal or technical interpretation of the

clause.[6] Despite appellant's assertions to the contrary (Br. 7, 16-17), the general rule is that a waiver of sovereign immunity should be interpreted narrowly; it creates liability only to the extent that the government's consent to suit is " 'unequivocally expressed.' " *United States* v. *Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States* v. *King*, 395 U.S. 1, 4 (1969)). " '[L]imitations and conditions upon which the Government consents to be sued must be strictly observed.' " *Lehman* v. *Nakshian*, 453 U.S. 156, 161 (1981) (quoting *Soriano* v. *United States*, 352 U.S. 270, 276 (1957)). See also *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138, 143 n.2 (1971).

Moreover, the distinction between state courts and state administrative agencies is important for many purposes. In a context closely related to this case, the Court has held that the constitutionality of prejudgment attachment depends in part on whether a judge—as opposed to an administrative official—has authorized the levy. *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601, 607 (1975). See also *Mitchell* v. *W.T. Grant Co.*, 416 U.S. 600, 615-616 (1974). Considerations similar to those that were the basis of the Court's ruling would have justified Con-

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[6] We note, to avoid any possible confusion, that we do not contend that sovereign immunity bars the instant proceeding. The instant proceeding—a suit against the Postal Service under Cal. Rev. & Tax. Code § 18818—is, in effect, an effort by appellant to impose a sanction on the Postal Service because it did not comply with appellant's administrative levy issued under Section 18817. Our submission is that, because of sovereign immunity, the Postal Service was not required to comply with the administrative levy. If our submission is correct, appellant should lose this enforcement proceeding on the merits, because the Postal Service's decision not to comply with the administrative levy was lawful and therefore cannot give rise to sanctions.

gress in concluding that its instrumentality should be subject only to decrees and orders issued by judges, not to state administrative orders. In other contexts, as well, Congress has not accorded the orders and proceedings of state administrative agencies the same weight as state judicial action. See, *e.g.*, 28 U.S.C. 2283; *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 552-556 (1972); *Kremer* v. *Chemical Construction Corp.*, 456 U.S. 461, 469-472 & n.7 (1982). See also *Moore* v. *City of East Cleveland*, 431 U.S. 494, 524 n.2 (1977) (opinion of Burger, C.J.) (citation omitted) (" 'state administrative agency determinations do not create res judicata or collateral estoppel effects' "). Cf. *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 281-283 (1980) (plurality opinion).

There is also good reason to believe that Congress did not intend its inclusion of a standard "sue and be sued" clause in the PRA to subject the Postal Service to every order requiring the payment of money that might be issued by any state, county, or municipal agency or official across the nation. Judicial process includes a relatively narrow class of orders that will generally be issued only in accordance with certain procedural safeguards. But if the Postal Service's waiver of immunity is not limited to judicial process, it is potentially very expansive and ill-defined. It would include virtually any order issued by any official of any unit of government.

"The Postal Service today is among the largest employers in the world" (*United States Postal Service* v. *Council of Greenburgh Civic Associations*, 453 U.S. 114, 122 (1981)). It is present in countless locales, and it is routinely the most visible federal installation in a community. Its operations bring it within the jurisdiction of state and local officials dealing

with landlord-tenant law, labor relations, zoning, building codes, traffic regulation, and many other subjects. It may become involved in disputes concerning the payment of money with its lessor, with an employee dissatisfied with the provisions of one of the Postal Service's nationwide collective bargaining agreements, or with many other individuals or local government agencies. Congress has explicitly provided a means by which such disputes can be resolved: the Postal Service may "be sued" in court, and if it does not prevail, it must pay any judgment entered against it.

But subjecting the Postal Service to administrative process unconnected to judicial proceedings will adversely affect its operations in significant ways that Congress could not have intended. If the Postal Service is not immune from state administrative orders requiring the payment of money, it will have to comply with every such order it receives—whether or not the order is lawful—or be subject to the sanctions for noncompliance that are specified by local law. For example, local ordinances governing disputes between a lessor and a lessee over the amount of rent due might provide that, upon the order of a local official, the lessee must pay the disputed amount or forfeit its claim (cf. *Lindsey* v. *Normet*, 405 U.S. 56 (1972)) and that the lessee can recover the sum only by exhausting administrative remedies prior to bringing an action in court. In such a case, the Postal Service's assets would be "diverted" (*Buchanan* v. *Alexander*, 45 U.S. (4 How.) at 20) from the objects designated by Congress, for an appreciable period of time, upon the order of a single municipal official. It is unlikely that Congress intended this to occur.

In addition, the defenses the Postal Service offers to such an order would be considered, in the first in-

stance, before a state or local agency; the Postal Service would then be enmeshed in whatever administrative proceedings are required by local law before it could gain access to court. The Postal Service's defenses in these circumstances will frequently involve the assertion of federal interests that are thought to preempt the local order (cf. *United States* v. *City of Pittsburg*, 661 F.2d 783 (9th Cir. 1981); *Stewart* v. *United States Postal Service*, 508 F. Supp. 112 (N.D. Cal. 1980)). It is most unlikely that Congress—which, as we noted, specifically provided a means for the Postal Service to remove to a federal forum actions brought against it in state *court*—considered state or local agencies an appropriate forum for the comparative weighing of federal and local interests.

Finally, if the Postal Service is not immune from state administrative orders, the Postal Service will have to bear the burden of initiating judicial proceedings to reclaim its assets, where that is the procedure specified by state law. As the Court has noted in a variety of contexts, this is not an insignificant burden. See, *e.g.*, *Mitchell* v. *W.T. Grant Co.*, 416 U.S. at 615-617 (distinguishing *Fuentes* v. *Shevin*, 407 U.S. 67 (1972)); *Freedman* v. *Maryland*, 380 U.S. 51, 57-59 (1965). The plain language of the statutory provision on which appellant relies shows that Congress did not intend to subject the Postal Service to this burden. Congress specified that disputes with the Postal Service are to be resolved by permitting the Postal Service to "be sued"—not by subjecting the Postal Service to an administrative fiat and then forcing *it* to sue to obtain relief.

b. It is true that appellant's orders to withhold are intended to obtain funds only from Postal Service

employees; in principle, they hold the Postal Service harmless. But the text of the "sue and be sued" clause does not appear to permit a principled distinction between this form of administrative order and an order directed at Postal Service assets. Moreover, administrative orders like appellant's are burdensome and disruptive in additional ways, because they can give rise to litigation between the Postal Service and the employee, or to a dispute between the state administrative agency and the employee in which the Postal Service is unavoidably implicated.

Postjudgment wage garnishment, however much hardship it inflicts on an employee, at least follows a full litigation. The employee will have had ample notice of his alleged debt; he will have had an opportunity to present his defenses; and both the existence and the amount of his liability will have been finally established. An administrative levy is different in each of these respects. It is likely to come as more of a surprise to the employee and to be more disruptive of his financial affairs. It is, presumably, more likely to be erroneous, and the amount is far more likely to be in dispute. The employee is less likely to have reconciled himself to it, and more likely to view the Postal Service as contributing to his difficulties.

For all of these reasons, administrative levies have far greater potential to disrupt the relationship between the Postal Service and its employee. Indeed, the employee may himself institute an action against the Postal Service, claiming that the levy is excessive or illegal. Thus, administrative levies create a significant danger that the Postal Service will find itself embroiled in—and spending federal funds on—a dispute between the employee and the state administrative agency in which it has no interest. Cf. *Snapp*

v. *United States Postal Service*, 664 F.2d 1329 (5th Cir. 1982); *Long Island Trust Co.* v. *United States Postal Service*, 647 F.2d 336 (2d Cir. 1981).[7]

Private commercial firms, of course, confront these problems. But the question is not whether the Postal Service, as an abstract proposition, is in some sense entitled to protections that private firms do not enjoy; it is whether Congress intended to deprive the Postal Service of protections that, in the absence of congressional action, all federal agencies enjoy.

Appellant's suggestion that Congress simply intended the Postal Service to be treated exactly as if it were a private corporation (Br. 19-22; see Am. Br. 4) is far too crude. Congress explicitly placed the

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[7] Prejudgment wage garnishment can create problems somewhat similar to those presented by administrative levies. But constitutional and statutory limits on prejudgment garnishment make it of limited utility to most creditors. See *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969); 15 U.S.C. 1671 *et seq.* (applicable to both prejudgment and postjudgment garnishment). We also note that this Court has never held that a federal instrumentality must honor a prejudgment order requiring the garnishment of an employee's wages and has consistently ruled that a "sue and be sued" clause does not subject a federal agency to judicial process that would seriously interfere with the performance of its functions (see *Priddy*, 295 U.S. at 237; *Burr*, 309 U.S. at 245). Indeed, if prejudgment garnishment is not supervised by a court and does not have a sufficient nexus with judicial proceedings, it may not fall within the "sue and be sued" clause at all. Cf. *Lynch* v. *Household Finance Corp.*, 405 U.S. at 552-556.

Moreover, prejudgment garnishment is, by definition, accompanied by the initiation of a lawsuit. The employee is immediately a party to a proceeding in which his rights and liabilities will be finally adjudicated. As the Court has ruled in a closely related context, this is a significant safeguard, and it makes the procedure substantially less onerous for the employee. Compare *Mitchell*, 416 U.S. at 615-616, with *Fuentes*, *supra*.

Postal Service in "the executive branch of the Government of the United States" (39 U.S.C. 201).[8] The Service is recognized to be immune from state and local taxation. Appellant lists attributes that the Postal Service shares with private corporations; there are many more attributes of the Postal Service that no private entity possesses.[9]

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[8] The legislative history describes the decision to establish the Postal Service as a government agency instead of a corporation as the principal "important improvement[]" over the legislation initially recommended (H.R. Rep. 91-1104, 91st Cong., 2d Sess. 6 (1970)). "The Postal Service is—first, last and always—a public service" (*id.* at 19). The Senate Committee stated: "[T]he Postal Service is in fact and shall be operated as a service to the American people, *not* as a business enterprise" (S. Rep. 91-912, 91st Cong., 2d Sess. 4 (1970) (emphasis added)).

[9] For example, the Postal Service may enter into international agreements (39 U.S.C. 407 and 408) and may levy fines (39 U.S.C. 5206, 5403, and 5604). The Postal Service must comply with the Freedom of Information Act, 5 U.S.C. 552 (although it may take advantage of certain additional exemptions (see 39 U.S.C. 410(c) and 412)), the Privacy Act of 1974, 5 U.S.C. 552a, and the Government in the Sunshine Act, 5 U.S.C. 552b (39 U.S.C. (Supp. V) 410(b)(1)). Its operations are specifically protected by numerous criminal statutes (see 39 U.S.C. 410(b)(2)). Postal Service employees are "part of the civil service" (39 U.S.C. 1001(b)), are covered by the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.* (39 U.S.C. 1005(c)), and are entitled to veterans' preferences (39 U.S.C. 1005(a)(2)). "Preference eligible" Postal Service employees must be provided the procedural protections of the Civil Service Reform Act of 1978, 5 U.S.C. 7501 *et seq.*, and all other employees also receive those protections unless collective bargaining agreements provide otherwise (see 39 U.S.C. 1005(a)(1) and (2)). Congress explicitly described Postal Service employees as "Federal employees" in determining that they would not have the right to strike (see H.R.

More important, it is clear that when Congress specified the kinds of *litigation* to which the Postal Service would be subjected, it viewed the Postal Service as a government agency, not a private body. Under 39 U.S.C. 409(c), for example, parties suing the Postal Service for torts must do so under the provisions of the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 *et seq.* Thus, in tort actions, the Postal Service, unlike a private business, may not be held strictly liable (see 28 U.S.C. 2680(a)); may not be held liable for punitive damages (28 U.S.C. 2674); may take advantage of numerous exceptions from liability, including the exception for "discretionary function[s]" (28 U.S.C. 2680(h)); may require administrative notification of a claim (28 U.S.C. 2672); and, indeed, may not even be sued for claims arising out of its central activity, the carriage and transmission of mail (see 28 U.S.C. 2680(b)).

The PRA also provides that the Postal Service will be governed by the same procedural rules "relating to the service of process, venue, and limitations of time for bringing action" as are applicable to the United States, and that the provisions of the Federal Rules of Civil Procedure that are applicable to the United States "shall apply in like manner" to the Postal Service (39 U.S.C. 409(b)). As we have noted, the Postal Service may remove to federal court actions brought against it in state court (39 U.S.C. 409(a)). And the Department of Justice has the

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Rep. 91-1104, at 14). Even in its "business" functions, the Postal Service, unlike a private firm, is subject to such statutes as the Contract Disputes Act of 1978, 41 U.S.C. (Supp. V) 601 *et seq.* and the Miller Act, 40 U.S.C. (& Supp. V) 270a *et seq.* (see 41 U.S.C. (Supp. V) 601(2); 39 U.S.C. 410(b)(4)(B)).

authority to represent the Postal Service in litigation (39 U.S.C. 409(d)). There is, accordingly, plainly no reason to assume that Congress intended the Postal Service to bear all the burdens of litigation that a private entity would confront.

B. Congress Has Chosen Other Means To Aid The States In Collecting Taxes From Federal Employees

On several occasions, Congress has addressed problems associated with the collection of state and local taxes from federal employees. Because of the large number of postal employees (675,000 nationwide), their geographical distribution, and the relatively rapid turnover in many postal jobs, the tax obligations and delinquencies of postal employees have been of particular concern to Congress.

Congress has permitted state taxing agencies to collect the taxes of federal employees, including postal employees, from the government agencies that employ them, under certain conditions. In particular, as the courts below emphasized, Congress has authorized the withholding of anticipated tax liabilities from government employees, including Postal Service employees. But Congress has never simply allowed state agencies to levy on the accrued wages of federal employees.

There is no basis for suggesting that Congress believed the "sue and be sued" clause of the Postal Reorganization Act would alter the specific statutory arrangements it had previously established for aiding the collection of state taxes. What evidence there is suggests that the "sue and be sued" clause was included in the PRA for reasons wholly unrelated to the tax debts of Postal Service employees. Moreover, subsequent to the passage of the PRA, Congress, in the course of addressing the problem of federal em-

ployees' local income tax delinquencies, revealed its understanding that the PRA had not subjected the Postal Service to the administrative orders of local taxing agencies.[10]

1.a. Federal employees first became liable for state and local income taxes in 1939. Public Salary Tax Act of 1939, ch. 59, § 4, 53 Stat. 575 (codified at 4 U.S.C. 111). Although federal employees presumably began being delinquent in their taxes shortly thereafter, Congress did not enlist federal agencies in the collection of state taxes until 5 U.S.C. 5517 was enacted in 1952.

Section 5517 provides that if a state so requests, the Secretary of the Treasury shall enter into an agreement with it providing that all federal agencies shall withhold taxes from their employees to the extent specified by state law. As the courts below noted, however, it is clear that Section 5517, as interpreted by regulations and by the agreements entered pursuant to it, requires only the collection of anticipated tax liabilities, not delinquent tax liabilities. The agreement between the federal government and California provides (J.A. 3):

3. Nothing in this agreement shall be deemed:

* * * * *

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[10] Appellants (Br. 23-24) and amici (Br. 3-4) emphasize the importance of taxation to state governments. Congress has recognized and accommodated this interest in a number of ways. See pages 26-33, *infra*. In addition, we note that the Postal Service, like other federal agencies, has regulations providing for the imposition of disciplinary sanctions, including dismissal, on employees who fail to pay state and local taxes. See 39 C.F.R. 447.11(b) and 447.26.

In any event, generalized assertions about the importance of collecting taxes to the states do not shed light on questions concerning the precise means Congress has prescribed for federal agencies to aid in their collection.

> (b) to require collection by agencies of the United States of delinquent tax liabilities of Federal employees * * *.

Moreover, the agreement specifies that the federal government is not required to implement state withholding statutes through any "procedures which do not substantially conform to the usual fiscal practices of agencies of the United States" (J.A. 3-4). Anticipated California state income tax liabilities are withheld from Postal Service employees pursuant to Postal Service regulations that give effect to Section 5517 and this agreement. See USPS, *Financial Management Manual* § 431.1(a) (1978).

The "sue and be sued" clause of the Postal Reorganization Act took effect in 1971. In 1974, in response to widespread delinquencies among federal employees in the payment of local income taxes (see, *e.g.*, S. Rep. 93-946, 93d Cong., 2d Sess. 2 (1974)), Congress enacted 5 U.S.C. 5520. Section 5520 parallels Section 5517; it authorizes the withholding of anticipated local income tax liabilities from federal employees' wages.

The bills that became Section 5520 were considered by the Post Office and Civil Service Committee of each House of Congress. These were the same committees that had considered the Postal Reorganization Act. Furthermore, the deliberations that led to Section 5520 were centrally concerned with the Postal Service. The Senate committee was informed, and specifically noted, that in New York City "[i]t was estimated * * * that 28,000 postal employees * * * owed the City about $1 million" (S. Rep. 93-946 at 2). Representatives of local governments complained to the committees that postal employees' delinquencies were a particular problem. See, *e.g.*, H.R. Rep. 93-

892, 93d Cong., 2d Sess. 3 (1974); *Withholding Federal Employees' Taxes Under City Ordinances: Hearing on H.R. 8660 Before the Subcomm. on Manpower and Civil Service of the House Comm. on Post Office and Civil Service*, 93d Cong., 1st Sess. 8, 9 (1973) (testimony of John J. Travers, Collector of Revenue, St. Louis, Missouri). The Postal Service, while not objecting to the proposed legislation, advised the committees of the administrative problems the legislation would create in view of the nature of the Postal Service's operations. See *id.* at 5; S. Rep. 93-946 at 3, 4-5; H.R. Rep. 93-892 at 11.

Congress determined that Section 5520 should apply to the Postal Service (see H.R. Rep. 93-892 at 6), and the statute explicitly so provides (5 U.S.C. 5520(c)(4)(C); see 39 U.S.C. 410(b)). But the committees directed the Secretary of the Treasury, in implementing Section 5520, to pay particular attention to the Postal Service's concerns. The House Committee explained (H.R. Rep. 93-892 at 5):

> There was a great deal of discussion regarding the inclusion of the Postal Service in this bill. The Committee recognized that this legislation may create administrative problems for the Postal Service. To a degree unique among Government agencies, postal employees are dispersed among many thousands of installations, branches and substations throughout the country. * * *.
>
> * * * It is the intent of the Committee that the Secretary of the Treasury, in negotiating withholding agreements with city officials as required by the bill, will work closely with the Postal Service to assure that the arrangements can be implemented by the Postal Service without undue hardship.

The Senate Committee similarly recognized the peculiar problems faced by the Postal Service. See S. Rep. 93-946 at 2.

b. Several aspects of the legislative history of Sections 5517 and 5520 are notable. First, the congressional committees that drafted the PRA, and included the "sue and be sued" clause, did not share appellant's understanding of that clause. As appellant itself recognizes, if appellant's interpretation of the "sue and be sued" clause is correct, Sections 5517 and 5520 are—in appellant's word—"superfluous" so far as the Postal Service is concerned (Br. 12 n.3). Under appellant's interpretation, the "sue and be sued" clause alone, without Section 5520, would authorize a local taxing authority to order the Postal Service to withhold anticipated tax liabilities from employees' wages, just as appellant asserts that it can order the withholding of delinquent California state taxes.[11] But the committees' deliberations were obviously based on the premise that without Section 5520 the Postal Service would not be required to comply with local withholding requirements. It is reasonable to conclude, therefore, that the committees responsible for the PRA did not believe that its "sue and be sued" clause required the Postal Service to honor the administrative orders of state taxing authorities. See *Bell* v. *New Jersey*, No. 81-2125 (May 31, 1983), slip op. 10-11.

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[11] Indeed, Cal. Rev. & Tax. Code § 18817 itself appears to authorize appellant to issue "orders to withhold" not only to collect delinquent taxes but also to collect from an employer the anticipated tax liabilities of its employees, if the employer has erroneously failed to withhold those sums from the employees' compensation. See also Cal. Rev. & Tax. Code § 18815.

Second, when Congress addressed the problems arising from federal employees' failure to pay their state and local taxes, it chose to require withholding of anticipated liabilities. It did not supplement the withholding schemes established by Sections 5517 and 5520 with any provision for the collection of delinquent taxes by means of state administrative levies.

This choice is significant because the administrative burdens involved in the withholding of anticipated taxes are quite distinct from those created by efforts to collect delinquent tax liabilities. Amounts withheld for anticipated liabilities are determined according to a standard schedule. The agency generally need not make an individualized adjustment of the paychecks of particular employees. Moreover, the amount of an anticipated tax withholding liability is rarely controversial. Litigation over the withholding of anticipated taxes—unlike litigation over the collection of delinquent taxes—is virtually unknown. Even if excessive anticipated taxes are withheld, they will, of course, be refunded to the employee. In general, withholding of anticipated taxes is unlikely to cause a dispute between a federal agency and its employee, or a dispute between the employee and the taxing authority in which the agency becomes involved. In this respect, the withholding of anticipated tax liabilities bears some resemblance to postjudgment garnishment, which, as we explained (see page 21, *supra*), is less likely than an administrative order to precipitate a disruptive dispute.

We note in this regard that an administrative levy requiring the withholding of money to satisfy alleged delinquent tax liabilities has even more potential to give rise to a dispute than other administrative orders. This is because a tax levy can be imposed with-

out the process that normally must accompany garnishments and attachments. Compare *Commissioner* v. *Shapiro*, 424 U.S. 614, 630 n.12 (1976), and *Phillips* v. *Commissioner*, 283 U.S. 589 (1931), with *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), and *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, *supra*. See *Fuentes* v. *Shevin*, 407 U.S. at 90-92 & n.24. A levy issued after summary or ex parte proceedings is presumably more likely to be erroneous and more likely to cause the employee to feel aggrieved. Congress has characteristically chosen the less potentially disruptive route of requiring withholding of anticipated liabilities, instead of authorizing state levies for delinquent taxes.

Finally, the congressional deliberations leading up to the enactment of Section 5520 were marked by a concern for the unique administrative difficulties faced by the Postal Service and the burdens that would be imposed on it. This is not surprising; the PRA, enacted shortly before Section 5520, was prompted by a desire to remedy the inefficiencies of the Post Office Department (see H.R. Rep. 91-1104, 91st Cong., 2d Sess. 4-6 (1970); S. Rep. 91-912, 91st Cong., 2d Sess. 2-3 (1970)), and Congress intended that the new Postal Service be a streamlined and efficient operation (see *Council of Greenburgh*, 453 U.S. at 122). It is unlikely that the committees that carefully considered whether to require the Postal Service to withhold anticipated local income taxes, and specified that the withholding program was to be administered in a way that took account of the Postal Service's concerns, meant—by enacting a standard "sue and be sued" clause—casually to subject the Postal Service to the potentially disruptive burden of executing state levies for delinquent taxes.

2. Congress has provided a specific means by which states can collect delinquent taxes by having sums

withheld from federal employees' wages. Appellant, however, has not made use of this mechanism. Under the "piggyback" enforcement provisions of the Internal Revenue Code, 26 U.S.C. 6361 *et seq.*, a state may enter into an agreement under which the Internal Revenue Service will collect the state's individual income taxes. The IRS can levy on the wages of federal employees (see 26 U.S.C. 6331), and it can use this enforcement device on behalf of a state under the piggyback provisions (see 26 U.S.C. 6361(a)).

When Congress enacted the piggyback provisions, it was acutely conscious of the potential administrative costs that might be imposed on the federal government if it became involved in the collection of state taxes. See H.R. Rep. 92-1018, 92d Cong., 2d Sess., Pt. 1, at 47, 51, 59, 67-68 (1972), S. Rep. 92-1050, 92d Cong., 2d Sess., Pt. 1, at 43, 44, 47, 55, 64 (1972). As a result, Congress specified criteria that a state income tax must meet in order to qualify for the piggyback provisions. See 26 U.S.C. 6362. Moreover, Congress provided that state taxpayers subject to levies under the piggyback provisions would be entitled to the same procedural protections as federal taxpayers, including the right to sue for a refund in federal court, notwithstanding the laws of the state. See 26 U.S.C. 6361(b).

These provisions further demonstrate that Congress does not casually allow state agencies to levy on federal employees' compensation. When Congress chose to permit such levies, it carefully specified the circumstances in which state taxes would be collected, and the procedures that were to be used in their collection, in order to reduce the associated administrative burdens. If California were to meet the appropriate specifications and enter into an agreement

under the piggyback provisions, it could take advantage of IRS levies against all federal employees, not just Postal Service employees. But Congress's decision to provide a specific, detailed scheme under which federal agencies could be enlisted in the collection of state income taxes is further evidence that Congress did not intend the general "sue and be sued" clause to constitute an open invitation to state taxing authorities to subject a federal instrumentality to whatever enforcement procedures state law happens to provide.

3. In the final analysis, the defect in appellant's position is that it reads too much into a standard, almost boilerplate provision—the "sue and be sued" clause—that Congress enacted unreflectively and, in all likelihood, for reasons that had nothing to do with Postal Service employees' state tax liabilities. "Sue and be sued" clauses are, of course, very common; Congress routinely includes them in statutes when it wishes to give a federal instrumentality some degree of financial autonomy. See generally *First National City Bank* v. *Banco para el Comercio Exterior de Cuba*, No. 81-984 (June 17, 1983), slip op. 12-14; *Keifer & Keifer*, 306 U.S. at 390 & n.3.

In general, the purpose of a "sue and be sued" clause is, as this Court has recently recognized, to "enabl[e] third parties to deal with the instrumentality knowing that they may seek relief in the courts" (*First National City Bank*, slip op. 14 (footnote omitted); see also *Merchant Fleet Corp.* v. *Harwood*, 281 U.S. 519, 525 (1930)). Congress gave virtually no independent consideration to the "sue and be sued" clause of the PRA,[13] and there is every

[13] The provision that became 39 U.S.C. 401 appeared in essentially the same form at every stage of the consideration of the proposed legislation that became the PRA. See *Postal*

reason to believe that it was intended to serve this same purpose. This purpose is, of course, completely unrelated to the summary collection of Postal Service employees' tax debts. By contrast, Congress has given careful independent consideration to the problems of collecting state and local taxes from federal employees—Postal Service employees in particular—and has been concerned not to impose undue burdens on the Postal Service. In this context, it would be inconsistent with Congress's intentions to interpret the "sue and be sued" clause to permit a form of state administrative tax levy to which federal agencies are not ordinarily subject.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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***Modernization: Hearings Before the Senate Comm. on Post Office and Civil Service*, 91st Cong., 1st Sess., Pt. 1, at 31 (1969) (proposed 39 U.S.C. 2126); *id.* at 101 (proposed 39 U.S.C. 205). It appears to have been given little detailed consideration by the committees. See, *e.g.*, H.R. Rep. 91-1104 at 9, 25.**

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